

FISCAL NOTE

SB 2682 - HB 3334

March 6, 2008

SUMMARY OF BILL: Creates the Commission on Tennessee Death Penalty Representation Services (the "Commission") and the Office of Tennessee Death Penalty Representation Services (the "Office") within the Judicial Department. The Commission is required to develop standards for representation of defendants in death-eligible cases, establish methods for determining indigency and providing representation, recommend compensation rates for appointed counsel, and recommend to the General Assembly a budget for the Office as part of the Judicial Department's budget. The Office is required to recruit and assign counsel and supervise the system of providing representation at all stages of a death case, including pre-trial, trial, direct appeal, and state post-conviction review. The Office shall monitor the performance of counsel, enforce adherence to standards of representation, and conduct continuing legal education (CLE) programs.

ESTIMATED FISCAL IMPACT:

**Increase State Expenditures - \$143,500/One-Time
\$6,525,000/Recurring**

Other Fiscal Impact - Additional pre-trial and trial representation and services provided to death-eligible defendants may result in a reduction in costs during the direct appeal and post-conviction phases of a case due to reduced claims of ineffective assistance of counsel, fewer issues raised on appeal, and shortened appeal times. The fiscal impact of any such savings is indirect and cannot reasonably be quantified.

Assumptions:

Commission

- Travel expenses for nine Commission members of \$1,184.04 per meeting (\$0.46 x 286 miles = \$131.56 x 9). Given the substantial responsibilities of the Commission, it is assumed that the Commission will meet six times each year at a cost of \$7,104.24 (\$1,184.04 x 6 = \$7,104.24). No legislative members will be appointed.

- The Commission will utilize staff of the Office to prepare information and analysis for Commission action and will not require separate staff.

Office

- The current Office of Post-Conviction Defender is retained. No shift of funds from the Post-Conviction Defender to the newly created Office.
- Four administrative positions at a total cost of \$312,721: an executive director at a salary of \$120,000; an administrative assistant at a salary of \$30,000; a non-attorney auditor at a salary of \$40,000; and a receptionist at a salary of \$28,000. Benefits of 43.45 percent are added to these salaries ($\$218,000 \times 1.4345 = \$312,721$).
- Fourteen positions in the trial division at a total cost of \$875,045: eight attorneys at a salary of \$50,000 each (\$400,000); four administrative assistants at a salary of \$30,000 each (\$120,000); and two investigators at a salary of \$45,000 each (\$90,000). Benefits of 43.45 percent are added to these salaries ($\$610,000 \times 1.4345 = \$875,045$).
- Six positions in the direct appeal division at a total cost of \$372,970: four attorneys at a salary of \$50,000 each (\$200,000); and two administrative assistants at a salary of \$30,000 each (\$60,000). Benefits of 43.45 percent are added to these salaries ($\$260,000 \times 1.4345 = \$372,970$).
- Six positions in the post-conviction division at a total cost of \$372,970: four attorneys at a salary of \$50,000 each (\$200,000); and two administrative assistants at a salary of \$30,000 each (\$60,000). Benefits of 43.45 percent are added to these salaries ($\$260,000 \times 1.4345 = \$372,970$).
- Four positions for enforcement of representation standards and resource support (brief banks, legal research assistance, and case advice) at a total cost of \$285,210: three attorneys at a salary of \$50,000 each (\$150,000); and one administrative assistant at a salary of \$30,000. Benefits of 43.45 percent are added to these salaries ($\$180,000 \times 1.4345 = \$258,210$).
- Four continuing education positions at a total cost of \$243,865: an education manager at a salary of \$55,000; an education coordinator at a salary of \$35,000; an attorney at a salary of \$50,000; and an administrative assistant at a salary of \$30,000. Benefits of 43.45 percent are added to these salaries ($\$170,000 \times 1.4345 = \$243,865$).
- Recurring costs of \$50,000 for conducting CLE programs.
- Recurring costs of \$25,000 for staff travel.
- Recurring expenditures at a total of cost \$185,256 for office space and utilities (\$13,400 per month), on-line legal services (\$838 per month), postage (\$1,000 per month), and a copy machine (\$200 per month) ($\$15,438 \times 12 = \$185,256$).

- One-time expenditures of \$133,000 for office set-up (computers, phones, furniture, printers, office supplies, etc.) for 38 positions at a cost of \$3,500 per position ($38 \times \$3,500 = \$133,000$).

Administrative Office of the Courts (AOC)

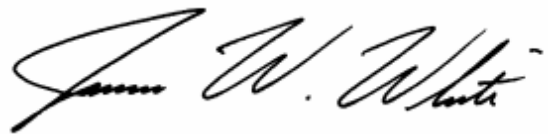
- Three positions at a total cost of \$200,830: one technology support at a salary of \$60,000; one human resources assistant at a salary of \$40,000; and one fiscal (billing) at a salary of \$40,000. Benefits of 43.45 percent are added to these salaries ($\$140,000 \times 1.4345 = \$200,830$).
- One-time expenditures of \$10,500 for office set-up for three positions at a cost of \$3,500 per position ($3 \times \$3,500 = \$10,500$).

Compensation for Private Attorneys, Experts, Investigators, Mitigation Specialists and Other Support

- The average total annual payment to private attorneys, experts, investigators, mitigation specialists, and other support in capital cases from FY02-03 through FY06-07 was \$2,350,000. In FY06-07, \$622,000 was paid to attorneys in non-capital first-degree murder cases (not including experts, investigators, etc.).
- Payments to appointed counsel will substantially increase under the rate structure recommended by the Commission. Rates will be higher, caps will be higher, and more expert services will be approved in these cases. Appointed counsel in all first-degree murder cases will be paid at the rates established by the Commission. The cost of private counsel, experts, and support services in death and death-eligible cases will increase by \$3,594,000 (an increase of \$2,350,000 for death cases and \$1,244,000 for death-eligible cases).

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

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